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To the Second Law Committee

The Economic Committee of the Parliament has in its statement concerning Government Bill No. 119 of the 1989 Parliament for a Product Liability Act dealt i.a. with the liability of a stimulants manufacturer, and more particularly that of a manufacturer or importer of tobacco products. With respect to the above, the Finnish Tobacco Manufacturers' Association deems it appropriate to respectfully forward the following:

Applicability of the law to tobacco products

In the Government Bill, tobacco and alcohol have not expressly been excluded from the Product Liability Act. In the justifications, however, it is stated that the starting point should be that users are aware of the generally acknowledged risks which may be associated with the use of these substances.

By contrast, the statement of the Economic Committee suggests that the Product Liability Act should to appropriate parts be extended also to tobacco. The Finnish Tobacco Manufacturers' Association considers that the starting point of the Government Bill, according to which the Product Liability Act would not be applied for personal injuries, potentially caused by tobacco products. We wish to forward the following to support this view.

Tobacco and alcohol as stimulants hold a special position vis-a-vis other products. They are consumed and their use is accepted being generally aware of the adverse effects associated with them.

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The specific nature of stimulants and their consumption must be observed from the point of view of product liability. The most correct way is to entirely exclude hazards and injuries potentially associated with the use of alcohol and tobacco from the Product Liability Act. This should be so at least in cases concerning such properties of the substances as are known to the consumer. The justifications of the Government Bill would, in our view, have the same effect, even without an explicit provision.

The statement of the Economic Committee, according to which the law should to "appropriate parts" also be applied to tobacco, causes much ambiguity with respect to liability for damages. It is to be feared that this statement would be appealed to when filing demonstrative compensation cases. A similar case is already presently pending in the City Court of Helsinki. It would also be uncertain whether tobacco manufacturers would be expected to modify in some manner the warning now printed on the sales packages in accordance with the stipulations of authorities, in order to avoid liability for damages. It is quite evident that should one opt for this line of action, a revision of the Tobacco Act would be an absolute necessity.

Warning against health risks of smoking

The statement of the Committee leaves the impression that a manufacturer who has not warned consumers against the health risks of smoking would be liable for compensation. It remains, however, quite unclear in what respects the Committee has wished to deviate from the Government Bill.

It cannot be considered justified to make product liability depend on the tobacco manufacturer's warning or the lack of it.

Manufacturers and sellers of products are even generally not liable to include warnings in their products, with the exception of cases where the law contains a corresponding obligation. The law contains provisions on a warning obligation for the events that a person who has to do with the substance/object would not otherwise be aware of the dangers or risks of the product.

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If, when judging the issue from the point of view of liability for damages, the starting point were that the manufacturer is liable in all instances where he has neglected to warn the consumer against even such risks that are generally known, this would mean adopting a totally different line. This kind of development cannot be held positive. This has been aptly demonstrated by the experiences gained from American case law.

When adopting provisions with respect to warning liability, it should be noted that the so-called Tobacco Act (693/1976) and the related Tobacco Statute contain provisions on measures aimed at reducing smoking for reasons of national health. The Tobacco Act requires that the sales package of tobacco must contain a warning, issued by a competent authority, of the health hazards and risks related to smoking. Consequently, this type of warning has been printed on all packages since the enactment of the Tobacco Act. The National Board of Health approves the retail packages for tobacco products and supervises that they do not contain markings that would give a misleading impression on the health hazards and risks of the product. This kind of markings are proscribed by the Tobacco Act.

The Tobacco Act does not oblige the manufacturer or seller of a tobacco product to warn consumers in any other way or draw their attention to health questions. (This type of influencing would also be difficult since any kind of tobacco advertising and other sales promotion has been explicitly proscribed by the law.)

We wish to emphasize that the Parliament has already at the time of passing the Act resolved the fundamental aspect of warning obligation; it is for the authorities and not for the industry to decide the way how warning must be done. The stand of the Economic Committee is against the Parliament's clear expression of will.

Period of limitation

The ten year maximum period of limitation contained in the Bill is well founded and in harmony with the corresponding statutes on limitations adopted by the EC. It would not be beneficial for the Finnish industry and its competitiveness if the period of limitation contained in the Finnish legislation were longer.

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Conclusion

In the statement of the Economic Committee, smoking is considered a significant problem for national health. - Government authorities have means to reduce smoking and its harmful consequences if so wished, e.g. by allocating revenues on health education.

Pursuing objectives associated with national health by means of artificial legal constructions of compensation liability for damages, alien to our legal system, as seems to be the implication in the statement of the Economic Committee, is not the right way.

Yours faithfully,

FINNISH TOBACCO MANUFACTURERS' ASSOCIATION

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